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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

COMMENTS OF U.S. INTELCO NETWORKS, INC.

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COMMENTS OF U.S. INTELCO NETWORKS, INC.

EXECUTIVE SUMMARY

U.S. Intelco Networks, Inc. ("USIN"), on behalf of itself and its Independent Telephone Company owners and users, files these comments with the principal goal of ensuring the implementation of the Congressional mandate to allow the meaningful participation of rural telephone companies and other designated preference groups in all spectrum auctions. USIN is concerned that the Commission's proposed rules will inadvertently favor concentration of licenses among deep-pocket players, in direct contravention of Congress' express will. USIN urges the Commission to ensure that the framework it adopts is responsive to the will of Congress by enhancing, rather than hindering, the opportunity for rural telephone companies to participate in the provision of PCS and other spectrum services.

Toward that end, USIN makes several specific recommendations, as described more fully herein, including (i) the adoption of auction procedures only where service is provided directly to the public; (ii) adoption of open, oral auctions as the exclusive method for licensing PCS; (iii) rejection of combinatorial bidding and pre-licensing geographic aggregation; (iv) adoption of a definition for small, rural telephone companies which fulfills Congressional objectives; (v) adoption of spectrum reservation rules which ensure the participation of preference groups; (vi) adoption of rules which provide preferential treatment for

designated groups outside reserved spectrum blocks; (vii) rejection of artificial regulatory barriers to participation by designated groups; and (viii) adoption of application procedures which ensure prompt provision of service to the public.

USIN submits that close attention to the consequences of each rule, as measured against the express Congressional mandates to ensure (i) that service is available in rural areas and (ii) the active participation by small businesses, rural telephone companies, and businesses owned by members of minority groups and women in the provision of spectrum services, will result in a regulatory framework which promotes the public interest. USIN therefore urges the Commission to adopt competitive bidding rules which implement these express public policy goals.

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COMMENTS OF U.S. INTELCO NETWORKS, INC.

U.S. Intelco Networks, Inc. ("USIN"), on behalf of itself and its Independent Telephone Company ("ITC" or "Independent") owners and users and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,¹ respectfully submits the following Comments in response to the Notice of Proposed Rule Making ("NPRM") released herein on October 12, 1993. USIN's primary goal is to assist the Commission's construction and implementation of a regulatory framework for competitive bidding which fulfills its Congressional mandate, and thus ensures that the identified policy interests are served. In support thereof, USIN shows the following:

USIN is wholly owned by 282 ITCs and provides customer database services, calling card billing validation services, 800 RESPORG services, revenue administration services and other related database services to over 1000 Independents nationwide. In providing these services, USIN has demonstrated its commitment to the deployment of advanced telecommunications services throughout

¹/ 47 C.F.R. §§ 1.415 and 1.419.

rural America and its initiative and participation in the implementation of an Independent SS7 network and related database services which have ensured the availability of line information database ("LIDB") and 800 database services to customers served by rural ITCs. Similarly, USIN is equally committed to assisting rural telecommunications providers in bringing personal communications services to rural America.

I. SUMMARY OF USIN'S POSITION

The legislative grant of authority to the Commission to employ competitive bidding procedures for licensing is accompanied by the correlative responsibility to ensure that implementation of the auction format promote the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; [and]

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.²

Congress thus makes clear its intent that the realities of providing rural telecommunications services be recognized, considered and accommodated. Similarly, Congress directs the Commission to ensure that certain prospective participants, including rural telephone companies, be given a meaningful

²/ Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. 103-66, 107 Stat. 312 (Aug. 10, 1993), § 6002(a)(3), adding new Section 309(j) to the Communications Act of 1934, as amended (emphasis supplied).

opportunity to participate in the provision of new services.³

USIN submits that these goals can be accomplished only by tailoring the auction framework in a manner which directly addresses this mandate. Explicit rules implementing these Congressional mandates are required of the Commission to discharge this express duty; it is not permissible to construct a framework wherein the ends sought by Congress "may" occur. USIN therefore advocates the following general points, as described more fully below:

1. Spectrum auctions should occur only when applications are mutually exclusive, and when the spectrum is utilized for direct service to paying customers.
2. Auctions should be conducted only orally, in an open forum.
3. Combinatorial bidding and pre-licensing geographic aggregation should be rejected as an unwarranted concentration of licenses, in direct contravention of Congressional directives.

³/ Congress reiterated its intent by providing that

the Commission shall . . . ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures

Budget Act at § 6002(a)(4)(D). Similarly, Congress expressly states its aversion to any methodology which is based solely or even predominantly on the expectation of Federal revenues to be derived thereby. Id. at § 6002(a)(7)(B).

4. The appropriate definition for small, rural telephone companies has already been determined by the Commission as those companies serving fewer than 50,000 access lines. In addition, telephone companies which only serve areas, whether incorporated or unincorporated, with a population of less than 10 000 should also be considered "rural."
 5. Small telephone companies, together with other small businesses and businesses owned by minorities and women, should be the only eligible participants in the bidding for channel block D. Inasmuch as rural telephone companies are both "small" and "rural", Channel Block C should be designated as reserved solely for eligible rural telephone companies to promote their participation in PCS within their service areas.
 6. Rural telephone companies and other designated entities should also be treated preferentially outside their service areas (in addition to block D eligibility), specifically, deferred payment plans, bid "credits" outside blocks C and D, eligibility for tax credits to promote sale to designated entities and preferential deposit requirements should be utilized to ensure that designated entities will be given a meaningful opportunity to participate in spectrum licensing.
 7. To ensure that rural areas are, in fact, provided with PCS service, there should be no barriers to partitioning licenses in rural areas to allow service provision in a timely fashion. In addition, areas unserved after the initial ten-year period should become available for new licensing.
 8. Application procedures should compliment, rather than hinder, the goal of prompt provision of service to the public.
- II. Auctions are appropriate only in the context of mutually exclusive applications for the direct provision public service for compensation.

Although it is clear that Congress intended to exclude "private" services from the auction process,⁴ USIN suggests that

⁴/ See, e.g., H.R.Rep. 111, 103d Cong. 1st Sess. at 253 (1993) (H.R. Rep. No. 103-111).

the Commission's focus on the mere existence of subscriber compensation⁵ as the signalling criteria for implementation of an auction for licenses ignores both the statute and practical considerations. Contrary to the Commission's proposal,⁶ "intermediate links" used by common carriers as a part of end-to-end service should not be the subject of competitive bidding.

Section 309(j)(2)(A) requires, as a prerequisite to utilization of a competitive bidding regime, that

the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee --

(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate

Clearly, the second clause is inapplicable to intermediate links because there is, by definition, no "direct" transmission by a subscriber utilizing the subject frequencies, but rather indirect transmission through the carrier's network.

Furthermore, the first clause is also unsatisfied, inasmuch as the compensation from subscribers must be "in return for" the ability to receive signals. Just as there is no "direct" transmission, the ability to receive signals is dependent upon the carrier's entire network, not simply upon intermediate links, and

⁵/ NPRM at ¶¶ 24 and 26.

⁶/ Id. at ¶ 29.

compensation is not related to the utilization of any particular medium or any aggregation of component parts of service, but rather for the completion of end-to-end service. Consequently, the Commission lacks statutory authority to implement competitive bidding for intermediate links utilized by common carriers in the provision of end-to-end service.

The implementation of competitive bidding for intermediate links is also unsound from a practical perspective. In proposing that "intermediate links", such as point-to-point common carrier microwave services be subject to competitive bidding, the Commission invites speculators and arbitrageurs to enter the telecommunications arena not for the purpose of providing service to the public, but rather to interject a profit margin, to the ultimate detriment of the public. Implementation of the Commission's proposal would, in fact, discourage efficient utilization of the spectrum by potentially rendering common carriers providing end-to-end service "hostage" to speculators (who may have paid an uneconomic price for the spectrum) or, alternatively, forcing utilization of uneconomic alternative intermediate links. Just as a subscriber is indifferent to (and generally unaware of) the existence of intermediate links, a common carrier must be unhindered to determine and implement the most cost-efficient method of supplying end-to-end service. This is absolutely crucial in rural areas where unnecessary costs, added to the already higher costs of service provision, may threaten the availability of high-quality service.

USIN therefore proposes that common carriers seeking utilization of available spectrum as an "intermediate link" between other facilities for the provision of end-to-end service should only be required to compete with applicants proposing a similar utilization, and further submits that, under such circumstances, the implementation of competitive bidding is statutorily barred.⁷ Adoption of this position has the practical benefits of avoiding entirely the issue of speculative bidders and significantly reduces the likelihood of large numbers of mutually exclusive applications. Even assuming, arguendo, that an auction were permissible among applicants seeking to use the spectrum as an "intermediate link" in the provision of end-to-end service, segregation by proposed use, rather than by service, would also result in less speculation and fewer mutually exclusive applications. USIN submits that the public interest in implementing these proposals far outweighs whatever administrative efficiency may be gained from an aggregate, service-by-service approach.

III. Auction design decisions must conform to the Congressional mandate.

In keeping with Congressional directives, the Commission must ensure that the auction process is one which benefits rural areas and promotes economic opportunity by disseminating licenses among small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, "designated

^{7/} Entities proposing to resell the spectrum would likely fall within the statute's ambit as licensees which enable subscribers to receive and directly transmit signals.

groups").⁸ Despite the fact that an auction, by its very nature, is not naturally conducive to these goals, but rather a highly advantageous forum for those entities with substantial financial wherewithal, Congress has nonetheless directed the Commission to design a framework which protects the designated groups' ability to compete. The challenge is not, however, insurmountable. The Commission may meet its responsibilities by simply refraining from the adoption of rules which favor larger, "deep-pocket" participants. Such rules clearly would be antithetical to the Commission's mandate.

A. Only open oral bidding promotes fairness.

USIN respectfully submits that open oral bidding (including real time electronic bidding) is the only methodology which will result in a fair and equitable process. As the Commission notes,⁹ there are several advantages to oral bidding. The process is more open, thus leading not only to the perception but also the reality of fairness. USIN also agrees with the Commission's assessment that oral bidding will generate lower private (information) costs;¹⁰ these costs may be significant, particularly for bidders without deep pockets. In general, the more public all relevant information is, the less advantage is given to the deep-pocket players; larger players will have less opportunity to "bully" either the system or the smaller players. In combination with the

⁸/ See supra nn. 2-3 and accompanying text.

⁹/ NPRM at ¶ 37, 46.

¹⁰/ Id. at ¶ 37.

other proposals outlined below, oral bidding will assist in promoting Congressional goals.

B. The Commission's proposed sequence of bidding contravenes Congressional directives.

The option of licensing the spectrum in descending order of population¹¹ is flawed in that it favors the bigger players. As the Commission itself notes, "it would seem more useful to most bidders to know which big markets they had won before bidding on smaller markets."¹² USIN suggests that the bidders to whom the Commission refers here can only be the "deep-pocket" bidders, which are the most likely prospective winners of the larger markets. By the Commission's own admission, therefore, this proposal would favor larger players, to the detriment of the designated groups.

As an alternative, USIN respectfully suggests that the auction should be conducted on a band-by-band basis, with the smaller spectrum bands being auctioned first, starting with the smaller population areas within each band. Given the reality of competition with deep-pocket players for these band/service areas in any event, smaller entities would benefit from this proposed progression because larger entities would be more inclined to conserve their resources in anticipation of bidding on the larger, more "desirable" bands/service areas. Broader participation in bidding for the smaller bands/service areas would thereby result, because the chilling effect of the inevitable presence of more

¹¹/ Id. at ¶ 53.

¹²/ Id.

well-heeled bidders would be minimized. Implementation of USIN's proposal would yield a more level playing field, not only within the auction setting, but also upon initiation of service, because the larger players would not have a pre-existing "lock" on large spectrum blocks in large population centers when bidding on the smaller bands/service areas starts. The value of each individual license would more fairly be reflected in the bidding process, and the designated groups and other smaller players would have a more reasonable opportunity to acquire smaller band licenses. Moreover, licensing smaller areas first encourages reasonably prompt service to all areas of the country.

C. Sealed bid geographic aggregation is unlawful.

The Commission's determination to encourage and facilitate pre-licensing geographic aggregation¹³ of licenses is misguided because it stands in direct contradiction to the legislative edict. In the face of Congressional directives to avoid concentration of licenses,¹⁴ the Commission's proposals to aggregate would, in fact, ensure such concentration. It is somewhat ironic that although the Commission avoided the creation of a national license for the PCS spectrum, it nonetheless is willing to "allow," if not actively

¹³/ The Commission "seek[s] to establish the sequence of bidding that is most likely to facilitate economically efficient aggregation of licenses across geographic regions and spectrum blocks while complying with the statute." NPRM at ¶ 52.

¹⁴/ See supra n. 2 and accompanying text.

promote, this occurrence.¹⁵

Also contrary to the letter and intent of the Budget Act, the Commission's proposal would also implement, in a single stroke, a policy which can benefit only the deep-pocket players, to the detriment of the designated groups which the Commission is admonished to protect. The Budget Act is completely devoid of any indication that aggregation is a permissible goal, and rules based upon this objective will be tainted beyond repair.

This flaw is aggravated by the obvious advantage the larger players would have if sealed bids for aggregated markets were allowed to prevail over winning oral bids for individual markets. Moreover, so-called "combinatorial" bidding, as proposed by the Commission, does not prohibit oral bidding by the sealed bidder. This fact, combined with the Commission's consideration of allowing licensees to withdraw a bid if a bidder-determined spending limit were reached,¹⁶ would make a mockery of the oral bidding process -- oral bids would be artificially high and the sealed bidder would be free to abandon his position upon reaching an arbitrary limit.

USIN strongly opposes combinatorial bidding because it clearly favors only the bigger players. Should the Commission nonetheless

¹⁵/ USIN recognizes that some issues raised herein, as they may relate directly to PCS, are also raised appropriately in reconsideration of the Commission's Second Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 93-451 (rel. Oct. 22, 1993) ("Second R&O"). USIN will also take an active role in these proceedings. Nonetheless, in the context of auction issues in general, it is necessary to consider their general impact herein.

¹⁶/ NPRM at ¶¶ 63-65.

determine that combinatorial sealed bidding is to be permitted, USIN submits that sealed bidders be forbidden from participating in the oral auction, and that a substantial forfeiture for failing to close a successful bid, in the form of a nonrefundable deposit, be exacted to preserve the integrity of the process.

D. No minimum bid is required.

USIN agrees with the Commission's tentative conclusion that the public interest would not be served by a minimum bid or "reservation price."¹⁷ It is appropriate that the ultimate service provider, not the Commission, establish the value of a license. Moreover, inasmuch as the Commission is prohibited from basing a finding of public interest on the expectation of Federal revenues,¹⁸ contemplated increases in auction revenues would not serve as sufficient justification for implementation of a minimum bid. More importantly, however, minimum bids may artificially limit the participation of potential service providers by imposing arbitrary regulatory impediments.

E. Alternative payment requirements for the designated groups is appropriate.

In light of Congressional direction to ensure the opportunity of the designated groups to participate in auctions,¹⁹ USIN agrees with the Commission's tentative conclusion that consideration of alternative payment methods for designated group members winning

¹⁷ Id. at ¶ 67.

¹⁸/ See supra n. 3.

¹⁹/ See supra n. 2.

auctions is desirable and appropriate."²⁰ USIN suggests that such winners be afforded the opportunity to defer payment of the bid price over time, at an interest rate which does not exceed a defined national prime rate.

IV. Meaningful preferences must be available to the designated groups.

Although recognizing that the designated group is comprised of several components, USIN generally confines its comments to the specific subject of rural telephone companies, agreeing with the Commission's tentative conclusion that different approaches may be necessary to address the concerns of the enumerated groups.²¹ Accordingly, USIN has developed a unified, tailored plan for the participation of rural telephone companies in the auction process.

A. Eligibility should turn on the size of a rural company.

While USIN agrees that existing Commission rules provide a firm basis for defining "rural telephone companies"²², it submits that the Commission's proposal to utilize the cable/telephone company cross-ownership exemption standard²³ is too restrictive because it will eliminate from consideration those telephone companies which do, in fact serve rural areas, albeit not the

²⁰/ NPRM at ¶¶ 68-71.

²¹/ Id. at ¶ 75.

²²/ Id. at ¶ 77.

²³/ Id. Section 63.58 of the Commission's Rules exempts a telephone company from application of the cross-ownership prohibition where it proposes to provide cable television service to any place within its telephone service area which has a population of less than 2500. 47 C.F.R. § 63.58.

"most" rural areas.²⁴ It is likely that, in light of Congressional experience with the cable/telephone cross ownership rules,²⁵ Congress would have specified that definition had it intended to so severely restrict the application of preferred status for rural telephone companies.

In addition, it is also important to note that, under the terms of the statute, rural telephone companies should qualify for preferential treatment based upon two factors -- both as rural telephone companies and as small businesses. As small businesses in the telecommunications industry, Independents are uniquely qualified to participate in the provision of spectrum services, particularly PCS. Accordingly, the Commission should adopt a meaningful standard to ensure that the public interest policies specified by Congress are implemented.

USIN proposes that Independents should qualify for preferential treatment under the definition specified in Section 61.39 of the Commission's Rules defining small telephone companies

²⁴/ It is important to note that a waiver of the cross-ownership prohibition is available in communities not meeting the 2500-population benchmark, but which are nonetheless sparsely populated. See 47 C.F.R. § 63.56 (a demonstration that the proposed service area has a density of less than thirty households per route mile entitles a telephone company waiver application to a rebuttable evidentiary presumption that cable service could not exist absent telephone company participation). The Commission thus recognizes that there exist gradations in the definition of "rural."

²⁵/ See, e.g., Cable Communication Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2780 (Oct. 30, 1984), Section 613 which codified the Commission's previously-existing definition of "rural" for the purposes of application of the exemption, excepting, however, the Commission's confinement of the exemption's application to new construction. 47 U.S.C. § 533.

as those which serve fewer than 50,000 access lines.²⁶ This definition is particularly appropriate inasmuch as it was derived with reference to the industry as a whole,²⁷ thereby comporting with criteria established by the Small Business Administration.²⁸ Companies qualifying under this definition should be eligible for all preferences accorded the designated group, both inside and outside of those areas where they provide telephone service.

In addition, telephone companies which serve only incorporated or unincorporated places with a population of 10,000 or less should also be eligible for preferential treatment. This definition is reasonable because companies qualifying thereunder clearly serve only "rural" areas; population density, as measured under this proposed definition, is an accurate and reasonable benchmark for defining the service areas of rural telephone companies. Inclusion of these entities, together with those serving fewer than 50,000 access lines, would most fully implement the Congressional directive by encompassing all intended beneficiaries of preferential treatment.

B. Channel Block C should be reserved for rural telcos.

With specific reference to PCS, rural telephone companies, along with all other designated group members, should alone be

²⁶/ 47 C.F.R. § 61.39.

²⁷/ See generally In the Matter of Regulation of Small Telephone Companies, 64 RR 2d 309 (1987).

²⁸/ See 13 C.F.R. § 121.601.

eligible to participate in bidding for Channel Blocks D.²⁹ USIN agrees with the Commission's assessment that the Commission's implementation of a set-aside could ensure these groups a meaningful opportunity to participate in the provision of PCS.³⁰ USIN also agrees that set-asides may be more appropriate for particular services³¹ and suggests, therefore, that in view of the Commission's positive experience with rural telephone companies' rapid and efficient deployment of rural cellular radio, that Channel Block C should be reserved exclusively for small telephone companies to both ensure that rural areas are served and also to promote the participation of rural telephone companies in the provision of state-of-the-art telecommunications services.³²

As a further method for promoting these twin goals of nationwide deployment and rural telephone participation, USIN submits that those small rural telephone companies which qualify as designated entities should be allowed to apply for a partition of its telephone service area within the licensed area prior to construction by the successful bidder. The partitioning Independent would be required to reimburse the successful bidder for the pro rata portion of the winning bid based upon the percentage of total population in the licensed area which reside

²⁹/ NPRM at ¶ 121.

³⁰/ Id.

³¹/ Id. at ¶ 75.

³²/ USIN notes for the record that this issue should also be addressed in a proceeding reconsidering the Second R&O. See supra n. 14.

within the telephone service area. Adoption of this proposal will promote the public interest by ensuring the participation of rural telephone companies in the provision of PCS within their respective service areas.

C. Rural telephone companies should be allowed to bid outside their telephone service areas.

Inasmuch as there is no Congressional indication whatsoever that rural telephone companies should be confined to participate, or confined to participate on a preferential basis, within their telephone service areas, small telephone companies should be entitled to participate in the bidding process as designated entities outside their telephone service areas. USIN submits that this will further the stated Congressional objective to promote the participation of rural telephone companies in the provision of spectrum services. Moreover, confinement within telephone service areas would result in rural telephone companies suffering a severe disadvantage when compared to other members of the designated group which would not be geographically limited.

USIN also submits that rural telephone companies, together with other designated entities, should be allowed to participate in bidding for all frequency blocks on a preferential basis. In addition to the deferred payment of a successful bid, as discussed above, members of the designated group should also be entitled to some consideration in the bidding process itself to enable meaningful competition for larger spectrum blocks. Specifically, USIN proposes that members of the designated group be granted a ten percent bid "credit" -- i.e., only 90% of a designated group

member's successful bid would be payable.

D. Tax credits would promote Congressional objectives.

USIN also supports the utilization of tax credits to promote the participation of designated entities in the provision of PCS and other spectrum services.³³ Particularly in the case where a tax credit is awarded to a party transferring interest to a designated entity, the Congressional goal of encouraging operational participation in the provision of service is served.

V. USIN supports safeguards to preserve the integrity of licensing.

The public interest is well served by implementation of preventive measures to ensure the integrity of the auction and licensing process. Toward that goal, and on the basis of past experience, USIN directs the Commission's attention to the issue of how eligibility criteria should be applied to consortium applicants. Independents are well aware of the potential abuse which can result from the eligibility of consolidated entities for preferences, given the proliferation of "51%-49%" deals that were offered to rural telephone companies by non-eligible entities in the cellular Rural Service Area licensing process. To protect the intended beneficiaries of Congress and the Commission's processes, USIN proposes that eligibility for preferences will be accorded only to consortia in which a super-majority (i.e., two-thirds) of control is in the hands of entities and/or persons which are individually eligible for award of the preferences. All ownership

³³/ NPRM at n. 58.

qualification rules should be carefully crafted to ensure that attributed affiliations with and ownership by designated entities preserve preferential treatment to the beneficiaries intended by Congress.

The Commission proposes to prevent unjust enrichment on the transfer of licenses from designated parties.³⁴ Although USIN recognizes the Commission's generalized concern, it should be noted that there appear to be no statutory prohibitions regarding the transfer of a license from one designated party to another; consequently, such transfers should not be restricted. Moreover, in order to ensure achievement of the Congressional mandate that designated groups participate in the provision of service and to prevent concentration of ownership, no Block C or Block D licenses should be eligible for transfer to entities which are not themselves eligible for preferential treatment. This rule would have the added benefit of minimizing trafficking and speculation abuse.

VI. Mere compliance with performance requirements should not impede delivery of service to rural America.

In view of Congressional direction to "include performance requirements . . . to ensure prompt delivery of service to rural areas . . .,"³⁵ and in light of the Commission's having determined PCS performance requirements on the basis of percentage of

³⁴/ Id.

³⁵/ 47 U.S.C. § 309(j)(4)(B).

population served,³⁶ the interplay of these two decisions must be considered. Inasmuch as rural areas are, by definition, sparsely populated, it is likely that a licensee can achieve the required 90% benchmark without providing coverage to large geographic areas within the market areas. To avoid the situation where a rural area may, therefore, never receive service, USIN submits that some attention must be given to geographic parameters and suggests that the regulatory history of cellular service provides an adequate guide. Accordingly, USIN suggests that areas remaining unserved within a geographic area after ten years be ceded for further licensing (assuming, of course, that the licensee has otherwise met its benchmark requirements).³⁷ This methodology will at least open the subject area to other potential service providers willing to provide the more rural areas of the country with PCS. Furthermore, the Commission should ensure that neither its anti-trafficking rules nor its performance requirements inhibit the voluntary partitioning of a service area to encourage prompt deployment of technology to serve rural areas by those willing and able to undertake that task.

In addition, USIN suggests that application of benchmark requirements to successful designated group bidders is unnecessary. Rural telephone companies, in particular, have a vested interest in

³⁶/ Second R&O at ¶ 134: licensees must serve one-third of the population in the relevant market within five years, two-thirds within seven years and 90% within ten years of being licensed.

³⁷/ With particular reference to PCS licensing, this issue is also ripe for consideration in reconsideration of the Second R&O. See supra n. 14.